



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mwilu; DCJ & VP, Wanjala, Njoki, Lenaola, & Ouko SCJJ)

SC PETITION NO. E048 OF 2025

-BETWEEN-

KENNETH OMONDI OKELLO.....APPELLANT

-VERSUS-

SAITO YUKIE ROMBO.....RESPONDENT

(Being a Notice of Preliminary Objection on grounds of Jurisdiction pursuant to Article 163 (4) (b) of the Constitution, Section 15 and Section 15B of the Supreme Court Act and Rule 33 of the Supreme Court Rules, 2025)

Representation:

Appellant acting in person

Mr. Donex Juma, for the Respondent
(*Donex Juma Advocates*)

RULING OF THE COURT

[1] UPON CONSIDERING the Notice of Preliminary Objection dated 26th February 2026 and filed on 13th March 2026, and the submissions in support thereof, wherein the respondent contends that: this Court lacks jurisdiction to hear and determine the appellants petition of appeal dated 6th November 2025 and filed on 18th February 2026, as the appellant has not sought certification as required under Article 163(4)(b) of the Constitution; that there is no pending substantive appeal before the Court of Appeal to anchor the present petition of appeal; and that the substrum of this case is a succession cause concerned with the administration of the *Estate of George Omolo Rombo*, a private matter that does not rise to the level of general public importance as contemplated

under Article 163(4)(b) of the Constitution. The respondent relies on the authorities in *Hermanus Phillipus Steyn Vs Giovanni Gnechi - Ruscone* [2013] KESC 11 (KLR) and *Daniel Kimani Njihia Vs Francis Mwangi Kimani and Thika District Land Registrar* [2015] KESC 19 (KLR) in support of his proposition above; and

[2] UPON ALSO CONSIDERING the appellant's written submissions dated 19th March 2026, filed in opposition to the Notice of Preliminary Objection, wherein he submits that: the petition of appeal is anchored on Article 50 (1) of the Constitution, which guarantees the right to a fair hearing, including the right of an aggrieved party to challenge and appeal a court's decision, and avers '**that to curtail (sic) such an absolute right would amount to shutting a litigant from the doors of justice and that would amount to unfair hearing contrary to the Constitution**'. The appellant further relies on Article 22(1) of the Constitution, asserting that every person has the right to institute court proceedings where a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or threatened, and maintains that the present petition of appeal has been instituted in the interest of enforcing and protecting the constitutional rights of the minors on whose behalf the appellant acts. The appellant also contends that the decision of the High Court declaring the minors' birth certificates inauthentic amounts to a violation of Article 14(1) of the Constitution, in that it interferes with the minors' right to citizenship by birth and renders the said certificates incapable of being relied upon for purposes of further registration; and

[3] FURTHER, the appellant submits that the petition raises both constitutional interpretation questions and issues of general public importance, which twin issues, in the appellant's view, were the subject of determination by the two superior courts below, and in particular, the question: whether a birth certificate may properly be relied upon as proof of paternity. He relies on the case of *LNW Vs AG & Another, Kenya Human Rights Commission*

(KHRC) (amicus curie); Law Society of Kenya (interested party)
[2016] KEHC 7266(KLR) in support of that submission; and

[4] NOTING that the dispute giving rise to the present appeal originates from a succession cause between the appellant and the respondent in **High Court Succession Cause Number 257 of 2017**, wherein the appellant sought revocation of the Grant of Letters of Administration issued to the respondent, and the High Court (*Maureen Odero J.*) dismissed the said summons for revocation on the grounds that the appellant and the minors he acted on behalf of, were not beneficiaries of the deceased. The appellant did not file an appeal within the prescribed time and sought leave to appeal out of time, which was granted on 14th August 2024. On 18th February, 2025, the appellant filed an application at the Court of Appeal seeking enlargement of time to file the appeal out of time, which application was found unmeritorious and accordingly dismissed (*Musinga JA & P*). It is the dismissal of the application that now forms the basis of the appeal before us; and

[5] COGNIZANT that this Court's jurisdiction under Article 163 (4) (b) of the Constitution is conditional on the Court of Appeal or this Court certifying a matter as of general public importance and aware that, in ***Hermanus Phillipus Steyn Vs Giovanni Gnechi -Ruscone*** [2013] KESC 11 (KLR), we stated that ***“the requirement for certification by both the Court of Appeal and the Supreme Court is a genuine filtering process to ensure that only appeals with elements of general public importance issues reach the Supreme Court”***. This Court also laid down the following guiding principles: that a general public importance issue is one that transcends the circumstances of the particular case and has a significant bearing on the public interest; raises a substantial point of law the determination of which will have a significant bearing on public interest; questions of which must have been subject of judicial determination by the courts below; and that the application for certification has been occasioned by a state of uncertainty in the law; and

[6] Having considered all the foregoing, **WE NOW OPINE AS FOLLOWS:**

- i. The sole issue falling for determination at this stage is whether this Court is vested with the jurisdiction to entertain the present appeal. It is now settled law that jurisdiction is foundational; absent it, a court must down its tools. The onus rests upon the appellant to demonstrate that an appeal properly lies within either the ambit of Article 163 (4) (a) or 163 (4)(b) of the Constitution.
- ii. The appellant in this case contends that the petition of appeal is founded on both Article 163 (4)(a) and 163 (4)(b) of the Constitution. We must reiterate, in that context, that this Court does not treat the two provisions as interchangeable; rather, each limb is distinct, with its own jurisdictional threshold, and must be satisfied independently. Moreover, in ***Twaha Vs Abdalla & 2 others*** [2015] KESC 20 (KLR), the Court held that where, for instance, a matter raises both constitutional issues under Article 163(4)(a) and issues of general public importance under Article 163(4)(b), each must be pursued separately and in accordance with its procedural requirements. It is evident to us, from the record, that the matter before the High Court was a succession cause; the appellant has, however, invoked Articles 14 (1), 21 (1), and 50 (1) of the Constitution to clothe his petition as an issue of constitutional interpretation and application purely to access this Court. This Court in ***Lawrence Nduttu & 6000 Others Vs Kenya Breweries Limited & Another*** [2012] KESC 9 (KLR) stated that:

“An appeal under Article 163 (4)(a) of the Constitution must originate from a Court of Appeal case where issues of contestation revolved around the interpretation or application of the Constitution. In other words, an appellant must be challenging the interpretation or application of the Constitution which the Court of Appeal used to dispose of the matter in that forum. Such a party must be faulting the Court of Appeal on the basis of such interpretation...”

- iii. The jurisdictional pathway under Article 163(4)(b) of the Constitution is not automatic; it is contingent upon prior certification and framing of issues of general public importance for determination. This requirement serves as a filtering mechanism to ensure that only matters meeting the requisite threshold reach this Court, and the guiding principles in *Hermanus Phillipus Steyn Vs Giovanni Gneccchi -Rusccone (supra)* are met;
- iv. The application for enlargement of time to appeal, having been filed approximately 450 days after the High Court judgment of 17th November 2023, we agree with the Court of Appeal, was inordinately delayed. Its dismissal left no competent appeal on the merits before the Court of Appeal that could be progressed from that forum to this Court for our determination. Besides, from the petition of appeal, the appellant's appeal is limited to the Ruling by a single Judge of the Court of Appeal in exercise of discretion. Further, the underlying succession dispute raises neither issues of constitutional interpretation and application nor matters of general public importance, but factual evidential material. Accordingly, this Court lacks jurisdiction to hear and determine the appeal under Article 163(4)(a) and 163(4)(b) of the Constitution.
- v. While we are mindful that the appellant is self-represented and might face limitations in that regard, this Court cannot countenance judicial innovations or crafts designed to unsettle well-established principles of law.
- vi. Consequently, we find that the Notice of Preliminary Objection is merited and upheld.
- vii. As costs follow the event, we see no reason to depart from general principles. However, as the petitioner is self-representing, we shall make no orders as to costs.

[7] CONSEQUENTLY, for reasons aforesaid, we make the following orders:

- i. The Notice of Preliminary Objection dated 26th February 2026 and filed on 13th March 2026 by the respondent is upheld;*
- ii. The petition of appeal dated 6th November, 2025, filed on 18th February 2026, is hereby struck out for want of jurisdiction;*
- iii. The sum of Kshs. 6,000/- deposited as security for costs upon lodging the appeal be refunded to the depositor; and*
- iv. There shall be no orders as to costs.*

It is so ordered.

DATED and DELIVERED at NAIROBI this 3rd day of July, 2026

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P.M. MWILU
DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF
THE SUPREME COURT

.....
S.C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
NJOKI NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

.....
W. OUKO
JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original.

REGISTRAR,
SUPREME COURT OF KENYA